



December 1, 2000

Mr. Miles K. Risley
Senior Assistant City Attorney
Legal Department
City of Victoria
P. O. Box 1758
Victoria, Texas 77902-1758

OR2000-4565

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143256.

The City of Victoria (the "city") received a request for all offense reports and arrest reports regarding two specified individuals. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning two specified individuals. In this case, we believe that the individuals' privacy rights have been implicated. Thus, we conclude that you must withhold any reports in which the specified individuals are suspects under section 552.101 of the Government Code and the holding in *Reporters Committee*.¹

¹Because you must withhold information under section 552.101, we need not address the applicability of section 261.201 of the Family Code to any information in which the individuals are suspects.

However, the submitted information contains offense reports in which the specified individuals are not suspects but rather victims. Therefore, we must address your asserted exceptions to this information. You assert that some of the submitted information is excepted under section 552.101 in conjunction with section 58.007 of the Family Code. Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Case numbers 6072 and 9908969 involve juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the requested information is confidential pursuant to section 58.007(c) of the Family Code. Therefore, you must withhold case numbers 6072 and 9908969 from disclosure under section 552.101 of the Government Code.

However, we conclude that case number 9713725 may not be withheld under sections 58.007 or 261.201 of the Family Code. Section 58.007(c) of the Family Code, as enacted by the Seventy-fourth Legislature, does not make juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996 confidential. *See Open Records Decision No. 644 (1996)*. The Seventy-fifth Legislature amended section 58.007 to make juvenile law enforcement records confidential, effective September 1, 1997. However, the Legislature chose not to make this most recent amendment retroactive in application. Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997 are not subject to the confidentiality provisions of either former section 51.14(d) or the current section 58.007 of the Family Code. Because the burglary occurred on July 13, 1997, the offense report is not excepted under former section 51.14(d) or section 58.007 of the Family Code. Further, case number 9713725 deals with the offense of burglary which is not abuse or neglect of a child which is confidential under

section 261.201 of the Family Code. Thus, section 261.201 of the Family Code does not apply to case number 9713725. Having raised no other exceptions to disclosure, you must release case number 9713725.

In conclusion, you must withhold any information in which the specified individuals are suspects under section 552.101 and the holding in *Reporters Committee*. Further, you must withhold case numbers 6072 and 9908969 under section 552.101 in conjunction with section 58.007(c) of the Family Code. You must release case number 973725.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

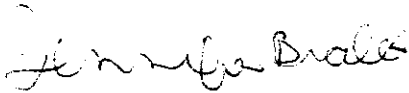
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/seg

Ref: ID# 143256

Encl. Marked documents

cc: Mr. Charles Parker
6338 North New Braunfels, #144
San Antonio, Texas 78209
(w/o enclosures)